

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 27, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF: 08HD-16  
Hawaii

Amend Board Action of June 13, 2008, Agenda Item D-1, and July 11, 2008, Agenda Item D-1, authorizing Issuance of a Request for Qualifications / Request for Proposals for lands at Waiakea, South Hilo, Island of Hawaii, Tax Map Key Nos: (3) 2-1-12: 41, and portions of 71 and 149

**REQUEST:**

Amend Board Approval of June 13, 2008 (Agenda Item D-1) and July 11, 2008 (Agenda Item D-1), which authorized the issuance of a Request for Qualifications / Request for Proposals ("RFQ/RFP") to select a potential lessee of lands at Waiakea, South Hilo, Hawaii

**APPLICANT:**

Department of Land and Natural Resources, Land Division

**LEGAL REFERENCE:**

Sections 171-6, 16, 17, 18, 19, 35, 36, 41, 59, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

**SUBJECT PROPERTY:**

Location: Portion of Government lands situated at Waiakea, South Hilo, Island of Hawaii, identified by TMK Nos: (3) 2-1-12: 41, and portions of 71 and 149, as shown on **Exhibit A**. (hereinafter referred to as the "Subject Property").

Area: 13.7 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

Zoning: State Land Use Classification: Urban  
County of Hawaii Zoning: ML-20, Limited industrial

**TRUST LAND STATUS:**

Section 5(b) lands Hawaii Admission Act; Public Law 88-233  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

**STATUTORY AUTHORITY:**

HRS Section 171-59(a) provides that a lease of public land may be disposed of through negotiation upon a finding by the Board that the public interest demands it. The full text of HRS §171-59(a) is attached as **Exhibit B**.

**CURRENT USE STATUS:**

The following is a summary of the Subject Property.

| TMK              | Area<br>(Acres) | Current Use   |
|------------------|-----------------|---|
| 2-1-12:41        | 1.1             | Vacant  |
| 2-1-12:71 (por)  | 3.0             | Vacant. Approx 3 acres to be withdrawn from EO 3718 to DBEDT. Remaining portion of Parcel 71 to remain under EO 3718 for Hilo Foreign Trade Zone. |
| 2-1-12:149 (por) | 9.6             | Vacant. Remaining portion of 11.9-acre Parcel 149 includes public swimming pool operated by County of Hawaii                                      |

**CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

An environmental assessment (EA), which described the potential impacts and proposed mitigation measures of a proposed 25.4-acre joint development project on the Project site, was prepared in accordance with the requirements of HRS Chapter 343.

The Final EA for the proposed joint development project was published in the OEQC's Environmental Notice on May 8, 2008 with a finding of no significant impact (FONSI).

**LEASE:**

Character of Use: Any use(s) allowed under the County zoning ordinance for the Subject Property, as said ordinance may be amended from time to time.

Lease Term: Up to sixty-five (65) years

Annual Rent: To be determined by the selected applicant's proposal, but to be not less than \$207,350 per year<sup>1</sup>

Known Rent Period: Twenty-five (25) years, subject to step-ups in Years 11, 16, 21 or as may otherwise be determined by the Chairperson.<sup>2</sup>

<sup>1</sup> Fair market rent as of March 17, 2008 as determined by an independent appraisal dated April 10, 2008 and approved by the Chairperson on May 13, 2008.

<sup>2</sup> The rent increases shall be subject to negotiation but shall not be less than the following, which was determined by the above-mentioned independent appraisal: Years 11-15 shall be the previous rent multiplied by 1.2801;

Rental Reopenings: Upon expiration of the 25-year known rent period, and every ten (10) years thereafter

**BACKGROUND:**

On June 13, 2008 (as Agenda Item D-1), the Board of Land and Natural Resources ("Board") authorized the issuance of a Request for Qualifications / Request for Proposals (RFQ/RFP) jointly with the Department of Hawaiian Home Lands ("DHHL") for a joint industrial/commercial development project in Waiakea, South Hilo, Hawaii.<sup>3</sup> The project, which is also known as the Kanoelehua Commercial Center and Industrial Park (the "KCCIP Project"), consists of approximately 25.4 acres and includes the 13.7-acre Subject Property and an adjacent 11.7-acre parcel owned by DHHL (TMK (3) 2-1-12: 70). See **Exhibit A**.

On July 11, 2008 (as Agenda Item D-1), the Board amended its approval by delegating the authority to the Chairperson to select the best applicant in accordance with the terms of RFQ/RFP and negotiate and execute the lease with the selected applicant.

On October 3, 2008, DHHL/DLNR issued the joint RFQ/RFP. The RFQ/RFP limited the permitted uses under the DLNR lease to be consistent with the existing ML-20 (limited industrial) zoning, and for the permitted uses under the DHHL lease to be consistent with the MCX (industrial-commercial mixed) zoning.<sup>4</sup>

One of the qualified applicants subsequently requested permission to rezone the DLNR parcel (to MCX), which was not permitted under the terms of the RFQ/RFP. Other issues also arose, which resulted in DHHL and DLNR canceling the RFQ/RFP.

DLNR and DHHL intend to issue a new/revised RFQ/RFP, but prior to doing so, staff wishes to clarify and confirm that the selected applicant may, subject to the Chairperson's approval, seek a rezoning of the DLNR lands. Should the selected applicant elect to seek a rezoning of the DLNR lands, such rezoning efforts shall be at the applicant's sole effort and expense.

In addition, the predevelopment activities of the selected applicant may vary depending on the applicant's proposed development plan. Such activities may include due diligence activities, processing a consolidation/resubdivision application with the County of Hawaii, and a possible rezoning application. If the scope of the predevelopment activities are limited, DLNR will enter negotiations with the selected applicant of a ground lease for the Subject Property. However, if the predevelopment activities will encompass an extended period or include discretionary approvals, DLNR may instead negotiate a development agreement in addition to the lease. The amended RFQ/RFP process is generally described in **Exhibit C**.

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Years 16-20 shall be the previous rent multiplied by 1.1314; and years 21-25 shall be the previous rent multiplied by 1.1314.

<sup>3</sup> Both DHHL and DLNR will participate in preparing and issuing the RFQ/RFP and negotiating the ground leases, but DHHL will be designated as the lead agency and point of contact for prospective applicants.

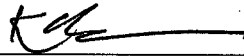
<sup>4</sup> DHHL has the power to designate the applicable county zoning district for its lands and intends to designate its lands within this project as "MCX" (industrial-commercial mixed use).

**RECOMMENDATION:**

That the Board amend its prior actions of June 13, 2008 (Agenda Item D-1) and July 11, 2008 (agenda Item D-1) to:

1. Authorize the sale of a lease by negotiation pursuant to a Request for Qualifications / Request for Proposals (RFQ/RFP), which RFQ/RFP may allow the selected applicant to seek a rezoning of the DLNR lands; and
2. Authorize the Chairperson to (i) issue the RFQ/RFP for the selection of the prospective lessee for the Subject Property, which RFQ/RFP may be issued jointly with DHHL; (ii) establish the criteria for evaluating and selecting the prospective lessee; (iii) accept and evaluate the applications submitted by prospective lessees; (iv) select the best applicant; and (v) negotiate and execute the lease with the best applicant for the Subject Property.

Respectfully Submitted,



Keith Chun, Planning and Development Manager

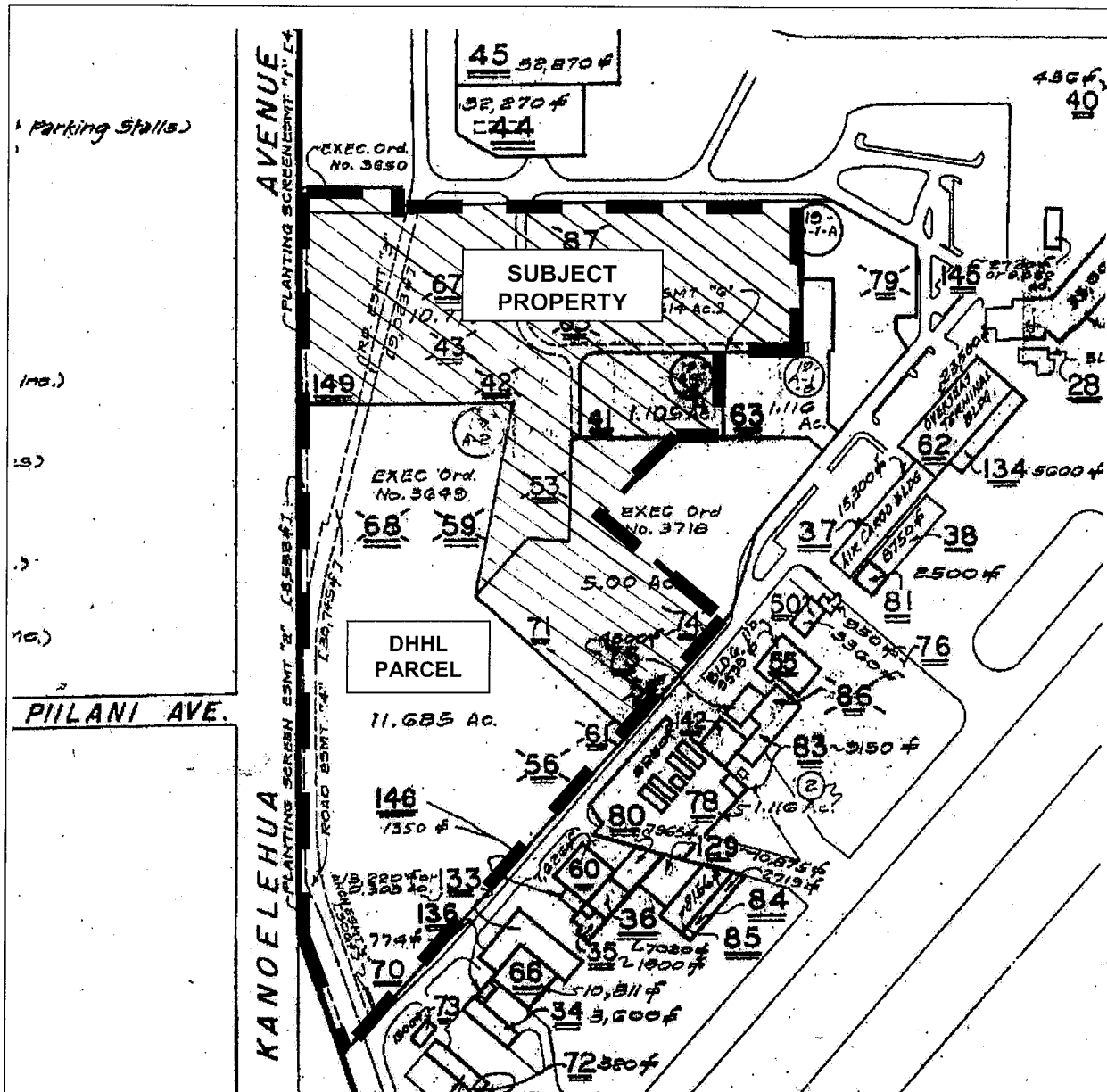
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



# MAP OF KCCIP PROJECT SITE & SUBJECT PROPERTY



EXCERPT FROM TMK (3) 2-1-12 PLAT MAP

## LEGEND:

- KCCIP Project Boundary (approximate)
- Subject Property (DLNR)

## **HRS §171-59(a)**

**§171-59 Disposition by negotiation.** (a) A lease of public land may be disposed of through negotiation upon a finding by the board of land and natural resources that the public interest demands it. Where the public land is being sought under this section by a sugar or pineapple company, and the company is the owner or operator of a mill or cannery, then, for the purposes of this section, the economic unit shall be that acreage of public land which when taken together with the lands already owned or controlled or available to the company, when cultivated is found by the board to be necessary for the company's optimum mill or cannery operation. In all other cases, public land to be sold under this section shall be an economic unit as provided in section 171-33(3).

After a determination is made to negotiate the disposition of a lease, the board shall:

- (1) Give public notice as in public auction, in accordance with the procedure set forth in section 171-16(a), of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;
- (2) Establish reasonable criteria for the selection of the lessee; provided that where the intended use of the land is agriculture, the department of agriculture shall establish the criteria;
- (3) Determine the applicants who meet the criteria for selection set by the board or the department of agriculture, as the case may be, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board or the department of agriculture were followed; provided that if any applicant does not notify the board of the applicant's objections, and the grounds therefore, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (3), above, dispose of the lease by negotiation.

If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.

## OUTLINE OF PROPOSED PROCESS (amended)

1. Board of Land and Natural Resources ("Board") authorizes issuance of RFQ/RFP and delegates authority to Chairperson to select best applicant and negotiate/execute ground lease.
2. DLNR/DHHL publishes notice of, and issues joint RFQ/RFP.
3. Evaluation committee selected by DLNR and DHHL reviews applicants' statement of qualifications (SOQs) and determines the qualified applicants. The evaluation committee may recommend a short list of the most qualified applicants.
4. DLNR/DHHL notifies the qualified applicants (or the short list of the most qualified applicants) and invites them to participate in RFP phase by submitting detailed development proposals, including evidence of financial capacity to complete the applicant's proposed project and a sealed rent bid.
5. Evaluation committee evaluates detailed development proposals and selects applicant with proposal that best satisfies the evaluation criteria.
6. Evaluation committee presents selected applicant to Chairperson for approval (for the DLNR property) and Chairperson enters into exclusive negotiations of a development agreement and/or ground lease.
7. Lease executed.